

ORDINANCE NO. 032-2001

AN ORDINANCE AMENDING THE MONROE COUNTY CODE BY ADDING SECTION 9.5-124, NON-RESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO); PROVIDING FOR THE SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR THE INCORPORATION INTO THE MONROE COUNTY CODE; AND DIRECTING THE CLERK OF THE COURT OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE

WHEREAS, The Monroe County Board of County Commissioners, during a regular meeting held on July 21, 2001, conducted a review and consideration of the request for an amendment to add Section 9.5-124 (NROGO) to the Monroe County Code to provide for an allocation system for non-residential floor area, which maintains the ratio of residential to non-residential development as required in the 2010 Comprehensive Plan; and

WHEREAS, *Policy 101.3* of the Monroe County Year 2010 Comprehensive Plan (2010 Plan) requires Monroe County to regulate non-residential development to maintain a balance of land uses; and

WHEREAS, *Policy 101.3.1* specifies that a permit allocation system, comprised of a residential permit allocation system and a commercial permit allocation system, be adopted; and

WHEREAS, pursuant to *Policy 101.3.3*, Monroe County shall maintain a ratio of approximately 239 square feet of non-residential development for each new residential unit permitted through the permit allocation system; and

WHEREAS, on January 4, 1996, the county instituted a de facto moratorium because the amount of non-residential floor area permitted between the adoption of the 2010 Plan and the effective date of the Plan exceeded the 239 feet ratio established by the Plan; and

WHEREAS, residential development has continued and by December 2000 had equaled the non-residential permits issued; and

WHEREAS, *Policy 101.5.5* requires the County to implement a permit allocation and point system for non-residential development; and

WHEREAS, the point system was modified to better fulfill Objective 101.5, to encourage redevelopment, maintain and enhance the community character, protect natural resources, encourage a compact pattern of development, and to encourage the development of affordable housing.

WHEREAS, an Employee Fair Share Impact Fee is established because all new non-residential floor area creates a need for employee housing and the availability and stability of employee housing is essential for the economic health of Monroe County.

WHEREAS, the Development Review Committee met on February 15, 2001 and conducted a public meeting and recommended approval to the Planning Commission of the proposed amendments; and

WHEREAS, the Monroe County Planning Commission reviewed the draft ordinance, took testimony during a public hearing conducted at seven meetings between February 28 and June 13, 2001, and recommend approval to the Board of County Commissioners of the addition to the text of the Monroe County Land Development Regulations, Section 9.5-124 (NROGO) as indicated in Resolution P42-01; and

WHEREAS, the Board of County Commissioners examined the proposed addition of Section 9.5-124 (NROGO) to the Monroe County Code submitted by the Monroe County Growth Management Division and recommended by the Monroe County Planning Commission; and

WHEREAS, the Monroe County Board of County Commissioners hereby supports the decision of the Planning Commission and recommendations of the Growth Management staff; and

WHEREAS, it is the desire of the Board that the following amendment to the County Code be approved, adopted, and transmitted to the state land planning agency for approval; and

NOW THEREFORE; BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT

Section 1. The Monroe County Code is amended to add Section 9.5-124 to read as follows:

Sec. 9.5-124. Non-residential rate of growth ordinance (NROGO).

(a) *Purpose and intent:* The purposes and intent of the non-residential rate of growth ordinance are:

- (1) To facilitate implementation of goals, objectives and policies set forth in the comprehensive plan relating to maintaining a balance between residential and non-residential growth.
- (1) To maintain a ratio of approximately 239 square feet of non-residential floor area for each new residential permit issued through the residential rate of growth ordinance (ROGO).
- (3) To promote the upgrading and expansion of existing small-size businesses and to retain the predominately small scale character of non-residential development in the Florida Keys.
- (4) To regulate the rate and location of non-residential development in order to further deter deterioration of public facility service levels, environmental degradation and potential land use conflicts.
- (5) To allocate the non-residential floor area annually hereunder, based on the goals, objectives and policies of the comprehensive plan and the Livable CommuniKeys master plans.

(b) *Definitions:* The words and phrases used in this section shall have the meanings prescribed in this chapter, except as otherwise indicated as follows:

Annual allocation period means the twelve-month period beginning on July 14, 2001, and subsequent one-year periods which is used to determine the amount of non-residential floor area to be allocated based on the number of ROGO allocations to be issued in the upcoming ROGO year.

Allocation date means the specific date and time by which applications for the NROGO allocation applications will be accepted and processed.

Annual non-residential ROGO allocation means the maximum floor area for which building permits may be issued during an annual allocation period.

Community master plan means a plan adopted by the Board of County Commissioners as part of the Monroe County Livable CommuniKeys Program.

Controlling date has the same meaning as the definition Sec. 9.5-120 (b), except it shall apply to NROGO applications under this section.

Historic Resources means a building, structure, site, or object listed or eligible for listing individually or as a contributing resource in a district in the National Register of Historic Places, the State Inventory of Historic Resources or the Monroe County Register of Designated Historic Properties.

Infill means development or redevelopment of land that has been bypassed, remained vacant, and/or underused in otherwise built up areas, which are serviced by existing infrastructure.

Infill site means any parcel or parcels of land that meets any one of the following criteria:

1. Has been designated as appropriate for non-residential development in an adopted community master plan, or
2. Located within two hundred (200) feet of an existing non-residential use in the Industrial (I), Marine Industrial (MI), Urban Commercial (UC), Sub Urban Commercial (SC), and Mixed Use (MU) Districts, as measured from property line to property line, which fronts on the same side of the public right-of-way as the subject property, or
3. Has existing non-residential uses with more than five hundred (500) square feet of lawfully established non-residential floor area.

Non-residential floor area means the sum of the gross floor area for a non-residential structure as defined in Sec. 9.5-4, any areas used for the provision of food and beverage services and seating whether covered or uncovered, and all covered, unenclosed areas except for walkways, stairways, entryways, parking and loading. Non-residential floor area is not space occupied by transient residential and institutional residential principal uses.

Non-residential ROGO allocation means the maximum amount of non-residential floor area for which building permits may be issued in a given time period.

Non-residential ROGO allocation award means the approval of a non-residential ROGO application for the issuance of a building permit to authorize construction of new non-residential floor area.

Site means the parcel(s) of land or parcels required to be aggregated under Sec. 9.5-256 to be developed or from which existing non-residential floor area is to be transferred or received.

Sunshade means an unenclosed structure used as protection from the weather.

Storage area means the outdoor storage of boats, campers, equipment, and materials for more than 24 hours. This is considered a light industrial use and does not include waste transfer stations, junkyards or other heavy industrial uses.

Sec. 9.5-124.1. General provisions.

(a) *Non-residential ROGO allocation award required:* No building permit shall be issued after January 4, 1996, that results in additional non-residential floor area on a site unless that non-residential development has received a non-residential allocation award, or is determined to be exempt as provided below.

(b) *Applicable geographic area:* The NROGO allocation system shall apply within the unincorporated area of Monroe County, Florida.

Sec. 9.5-124.2. Type of development affected.

(a) The NROGO shall apply to the development of non-residential floor area and other uses as described in subsection (b) and (c) below for which a building permit or development approval is required by this chapter and for which building permits have not been issued prior to the effective date of the non-residential permit allocation system.

(b) Notwithstanding the provisions of Sec. 9.5-4 (D-8) *Development*, the following new uses shall be prohibited until appropriate areas are so designated in a community master plan:

- (1) Commercial retail high-intensity uses that generate more than one hundred and fifty (150) trips per thousand (1,000) square feet of floor area.
- (2) Storage areas, as a principal use.
- (3) Outdoor retail sales areas on a vacant lot and any new or expanded outdoor retail sales associated with structures of less than five hundred (500) square feet of floor area.

(c) New or expanded outdoor retail sales associated with a lawfully established structure, existing on the effective date of this ordinance, of at least five hundred (500) square feet of floor area may be permitted with a minimum of a minor conditional use approval.

Sec. 9.5-124.3. Type of development not affected.

(a) The NROGO shall not apply to the development described below:

- (1) *Development with no net increase in non-residential floor area:* The redevelopment, rehabilitation or replacement of any lawfully established non-residential floor area which does not increase the amount of non-residential floor area greater than that which existed on the site prior to the redevelopment, rehabilitation or replacement.
- (2) *Areas exempted from residential ROGO:* Any area of unincorporated Monroe County exempted from residential ROGO as provided for in Sec. 9.5-120.4.
- (3) *Public/governmental uses:* Public/governmental uses, including capital improvements [as defined by Sec. 9.5-4 (C-5)] and public buildings [as defined by Sec. 9.5-4 (P-18)].
- (4) *Development activity for certain not-for-profit organizations:* Non-residential development activity by federally tax exempt not-for-profit educational, scientific, religious, social, cultural and recreational organizations which predominately serve the county's permanent population if approved by the Planning Commission after review by the planning director.
- (5) *Vested rights:* Landowners with a valid, unexpired development of regional impact approval granted by the county prior to January 4, 1996, (effective date of the comprehensive plan) or an approved vesting determination by the county from the non-residential allocation requirements of this section and the comprehensive plan.
- (6) *De minimis expansion of non-residential floor area:* The cumulative expansion, after January 4, 1996, of any existing non-residential floor area by one hundred (100) square feet or less.
- (7) *Industrial uses:* Industrial uses in the Maritime Industrial (MI) and the Industrial (I) Land Use Districts provided that the floor area is restricted to manufacturing, assembly, wholesaling, and distribution uses. All other uses which, may be permitted in the Land Use District are subject to the requirements of this Ordinance and will require a Non-Residential Rate of the Growth Ordinance (NROGO) allocation.
- (8) *Agriculture/Aquacultural uses:* Lawfully established agricultural and aquacultural uses in the Agricultural and Aquaculture Use Overlay (A).
- (9) *Sunshade:* Unenclosed sunshades comprising in total not more than two hundred (200) square feet may be permitted for an existing lawfully established use.
- (10) *Transfer off-site of existing non-residential floor area:* The demolition and transfer off-site of non-residential floor area from a sender site and the development of the transferred non-residential floor area on a receiver site in accordance with the following procedures and criteria:
 - a. *Eligibility of sender floor area:* Only non-residential floor area within an enclosed structure, as defined in Sec. 9.5-4 (F-9), not including uncovered areas designated for food and beverage services and seating, shall be eligible for transfer. Non-residential floor area shall meet all the following criteria:
 - i. Be lawfully established; and

- ii. Is not be contained within a structure of historic value or a structure which contributes significantly to the character of the streetscape; and
- iii. Is not located within any area of unincorporated Monroe County exempted from residential ROGO as provided for in Sec. 9.5-120.4 or exempted from NROGO under subsections (3), (4), (6), (7), or (8) above.

b. *Criteria for redevelopment of non-residential floor area off-site:* In order to redevelop off-site, a receiver site shall be evaluated for site conditions and shall meet all of the following criteria:

- i. Has existing lawfully established non-residential floor area or is an infill site; and
- ii. Is located in the same ROGO subarea as the sender site; and
- iii. Is not a commercial retail high intensity use which will generate more than 150 trips per one thousand (1000) square feet of floor area; and
- iv. Is not located on Big Pine Key, No Name Key or within a CARL acquisition area; and
- v. Receives no negative environmental points when evaluated pursuant to Sec. 9.5-124.8 (a) (4) or (5) or (6); and
- vi. Is not located in a "V" zone pursuant to Sec. 9.5-124.8 (a) (8), and
- vii. Is not located in a coastal barrier resources system pursuant to Sec. 9.5-124.8 (a) (9); and
- viii. Is not located in an offshore island/conservation land protection area pursuant to Sec. 9.5-124.8 (a) (10).

c. *Limitations on the amount of non-residential floor area which may be transferred to any one site:* The amount of non-residential floor area which may be transferred to any one site shall be as follows:

- i. No more than a maximum cumulative total of four thousand (4,000) square feet of non-residential floor area may be transferred to any one site.
- ii. A receiving structure with existing non-residential floor area shall not be expanded using transferred floor area if the expansion results in a structure with more than ten thousand (10,000) square feet of non-residential floor area, except within the Urban Commercial Land Use District where a structure may be expanded to a maximum total of fifty thousand (50,000) square feet of non-residential floor area.
- iii. The amount of non-residential floor area that may be transferred to or from a site shall not be less than two hundred (200) square feet and shall be in increments of "100" (i.e., 200, 300, 400, etc.) square feet.

d. *Procedures for transfer of non-residential floor area:* The following procedures shall be followed for permitting transfer of non-residential floor area off site:

- i. A pre-application conference and at a minimum, a minor conditional use approval shall be required for both the sender site and the receiver site.
- ii. The sender non-residential floor area shall be assigned a unique identifier number(s), for each one hundred (100) square foot increments, that shall be used for tracking and monitoring by the planning department. The unique identifier number shall be itemized in the conditional use orders and building permits required for both the sender and receiver sites. All floor area to be transferred shall be rounded to the nearest one hundred (100) square feet.
- iii. No building permit shall be issued for the non-residential floor area on the receiver site until the sending site structure is demolished as per an issued demolition permit and a final inspection for the demolished floor space has been completed by the building department.

Sec.9.5-124.4. NROGO allocations.

(a) *Maximum amount of available floor area for the annual non-residential ROGO allocations:* The maximum amount of floor area available for allocation under NROGO shall be determined by multiplying the number of residential permits available for the annual residential allocation period year by two-hundred thirty-nine (239) square feet and rounding the product to the nearest one hundred (100) square feet. This maximum total may be adjusted as provided for in subsection 9.5-124.6(a). For the first annual allocation period, the maximum amount of floor area that may be made available for allocation is to be based upon the number of permits issued under ROGO, starting with the Third Quarter, ROGO Year 1 (starting April 14, 1993) through ROGO Year 9 (ending July 13, 2001) and number of ROGO allocations to be made in ROGO Year 10, reduced by the amount of non-residential floor area approved in permits, issued after the adoption of the comprehensive plan on April 15, 1993. Any remaining part of the maximum annual allocation not made available for allocation in an annual allocation period by the Board of County Commissioners in Sec. 124.4 (g) shall be carried over to the next annual allocation period.

(b) *Maximum allocation of non-residential floor area by site:* The amount of non-residential floor area to be allocated shall be limited to a maximum of two-thousand five hundred (2,500) square feet for any one site, except for sites designated for non-residential development in a community master plan. For sites located within a community master plan, the maximum allocation shall only be limited by the maximum floor area per structure in subsection (c) below.

(c) *Maximum floor area per structure:* An existing structure shall not receive an allocation that expands the structure to more than ten thousand (10,000) square feet of non-residential floor area, except that non-residential floor area of structures in the Urban Commercial Land Use District may be expanded to not more than fifty thousand (50,000) square feet.

(d) *Large and small size allocations:* A minimum of seventy-five percent (75%) of the available floor area to be allocated in any annual allocation period shall be for applications requesting floor area of two thousand five hundred (2,500) square feet or less. The remaining twenty-five percent (25%) may be allocated to applications requesting floor area of more than two thousand five hundred (2,500) square feet.

(e) *Annual allocation and semiannual allocation periods:* The maximum annual amount of non-residential floor area which may be made available for allocation and the distribution between small (2,500 square feet or less) and large (more than 2,500 square feet) allocations shall be established by the Board of County Commissioners consistent with the provisions of Sec. 9.5-124.4 (a) and (d) upon the recommendation of the Planning Commission and planning director as set forth in Sec. 124.4 (g). The allocation shall be made available on a county-wide basis. The amount of non-residential floor area which, may be made available for each allocation period as determined in Sec. 9.5-124.4 (g), may be available for allocation awards after the first allocation date of that year. Any floor area not allocated in this first allocation or floor area that becomes available later in the current allocation period under provisions of Sec. 9.5-124.6 (a) may be made available for allocation awards after a second allocation date.

(f) *Allocation dates:* To be considered for an allocation award, all NROGO applications must be submitted to the planning department and deemed complete by the planning director by no later than 4:00 p.m. on the specified allocation date. The first allocation date of a NROGO annual allocation period shall be the last day of the fourth quarter ROGO allocation period, except that for the first NROGO annual allocation period, the allocation date shall be January 1, 2001. The second allocation date for the current NROGO annual allocation period, if necessary, shall be the last day of the second quarter ROGO allocation period.

(g) *Board of County Commissioners action required:* The Board of County Commissioners shall adopt by resolution the total amount of non-residential floor area, which may be made available for the annual allocation and the distribution of this allocation between small and large size allocations after receiving recommendations from the Planning Commission and planning director. The Planning Commission shall make its allocation recommendations to the Board of County Commissioners at least ninety (90) days prior to the annual allocation date. The Board of County Commissioners shall establish the annual maximum allocation, the allocation to be made available for the first allocation period and the distribution between small and large size allocations by no later than sixty (60) days prior to the allocation date.

(h) *Annual allocation:* The Board of County Commissioners may make available for allocation all or part of the maximum annual allocation. This annual allocation may be distributed between the two allocation dates.

Sec. 9.5.124.5. Application procedures for NROGO.

(a) *Application for allocation:* The planning department shall accept applications to enter the NROGO system on forms provided by the planning director. The NROGO application form must be accompanied by an approved building permit application in order to be considered in the current annual allocation period. The application must state for which allocation category an award is being sought, either two thousand five hundred (2,500) square feet or less, or more than two thousand five hundred (2,500) square feet. The planning director shall review the NROGO application for completeness. If the application is determined to be incomplete, the planning director shall reject the NROGO application and notify the applicant of such rejection, and the reasons therefore, within ten (10) working days. If determined to be complete, the application shall be assigned a controlling date.

(b) *Fee for review of application:* Each NROGO application shall be accompanied by a nonrefundable processing fee as may be established by resolution of the Board of County

Commissioners. Additional fees are not required for successive review of the same NROGO application unless the application is withdrawn and resubmitted.

(c) *Compliance with other requirements:* The NROGO applications shall indicate whether the applicant for the non-residential floor area allocation has satisfied and complied with all county, state, and federal requirements otherwise imposed by Monroe County regarding conditions precedent to issuance of a building permit and shall require that the applicant certify to such compliance.

(d) *Time of review:* Notwithstanding the time periods set forth in Sec. 9.5-113, the director of planning may retain the allocation application and its associated building permit application for review pursuant to the evaluation procedures and criteria set forth in Sec. 9.5-124.6 and Sec. 9.5-124.8.

(e) *Non-county time periods:* The county shall develop necessary administrative procedures and, if necessary, enter into agreements with other jurisdictional entities which impose requirements as a condition precedent to development in the county, to ensure that such non-county approvals, certifications and/or permits are not lost due to the increased time requirements necessary for the county to process and evaluate residential dwelling unit applications and issue allocation awards. The county may permit evidence of compliance with the requirements of other jurisdictional entities to be demonstrated by "coordination letters" in lieu of approvals or permits.

(f) *Limitation on number of applications:*

- (1) An individual entity or organization may have only one (1) active NROGO application per site in the annual allocation period.
- (2) There shall be no limit on the number of separate projects for which NROGO applications may be submitted by an individual, entity or organization.

(g) *Expiration of allocation award:* An allocation award shall expire when its corresponding building permit is deemed to expire pursuant to Sec. 9.5-115 and Sec. 9.5-115.1 or after sixty (60) days of mailing of notification for the award of the allocation of non-residential floor area.

(h) *Withdrawal of NROGO application:* An applicant may elect to withdraw a NROGO application without prejudice at any time up to finalization of the evaluation rankings by the Planning Commission. Revision and resubmission of the withdrawn application must be in accordance with subsection (i) below.

(i) *Revisions to applications and awards:*

- (1) Upon submission of NROGO application, an applicant may revise the application if it is withdrawn and resubmitted prior to the allocation date for the allocation period in which the applicant wishes to compete. Resubmitted applications shall be considered "new", requiring payment of appropriate fees and receiving a new controlling date.
- (2) After receipt of an allocation award, and either before or after receipt of a building permit being obtained, but prior to receipt of a certificate of occupancy or final

inspection, no revisions shall be made to any aspect of the proposed non-residential development which formed the basis for the evaluation review, determination of points and allocation rankings, unless such revision would have the effect of increasing the points awarded.

- (3) After the receipt of an allocation award, a building permit and a certificate of occupancy or final inspection, no revision shall be made to any aspect of the completed non-residential development which formed the basis for the evaluation, review, determination of points and allocation rankings, unless such revisions are accomplished pursuant to a new building permit and unless such revisions would have the net effect of either maintaining or increasing the number of points originally awarded.

(j) *Clarification of application data:*

- (1) At any time during the NROGO allocation review and approval process, the applicant may be requested by the director of planning or the Planning Commission, to submit additional information to clarify the relationship of the allocation application, or any elements thereof, to the evaluation criteria. If such a request is made, the director of planning shall identify the specific evaluation criterion at issue and the specific information needed and shall communicate such request to the applicant.
- (2) Upon receiving a request from the director of planning for such additional information, the applicant may provide such information; or the applicant may decline to provide such information and allow the allocation application to be evaluated as submitted.

Sec. 9.5-124.6. Evaluation procedures for non-residential floor area allocation.

(a) *Adjustment of non-residential floor area allocations:* At the start of each annual allocation period and prior to the second allocation date, as part of his duties in Sec. 124.4 (g), the planning director shall recommend to the Planning Commission additions or subtractions to the basic allocation, based upon any of the following, as appropriate:

- (1) The amount of floor area allocation awards that expired during the current annual allocation period.
- (2) The amount of floor area allocation awards available which were not allocated at the first allocation of the current annual allocation period;
- (3) A portion or all of the remaining maximum floor area not made available in the current or previous annual allocation period; and
- (4) Any other modifications required or provided for by the comprehensive plan.

(b) *Initial evaluation of allocation applications:* Upon receipt of completed NROGO allocation applications, the director of planning or his designee shall evaluate the allocation applications pursuant to the evaluation criteria set forth in Sec. 9.5-124.8.

- (1) Within thirty (30) days of an allocation date, unless otherwise extended by the Planning Commission, the planning director shall:

- a. Complete the evaluation of all allocation applications submitted during the relevant allocation period; and
 - b. Total the amount of square footage for which allocation applications have been received; and
 - c. Rank the floor area allocation applications in descending order from the highest evaluation point total to the lowest for each size classification.
- (2) If the amount of floor area represented in the allocation applications by size classification is equal to or less than the available allocation, the director of planning may make a recommendation to the Planning Commission that all of the allocation applications be granted allocation awards.
- (3) If the total amount of floor area represented in the allocation applications by size classification, is greater than the available floor area, the director of planning shall submit an evaluation report to the Planning Commission indicating the evaluation rankings and identifying those applications whose ranking puts them within the allocation, and those applications whose ranking puts them outside of the allocation.

(c) *Public hearings and allocation awards:* Upon completion of the evaluation ranking report and/or recommendation, the director of planning shall schedule and notice a public hearing by the Planning Commission pursuant to otherwise applicable regulations.

- (1) At or prior to the public hearing, the Planning Commission may request, and the director of planning shall supply, copies of the allocation applications and the director of planning evaluation worksheets.
- (2) Upon review of the allocation applications and evaluation worksheets, the Planning Commission may adjust the points awarded for meeting a particular criteria, adjust the rankings as a result of changes in points awarded, or make such other changes as may be appropriate and justified.
- (3) The basis for Planning Commission changes shall be specified in the form of a motion to adopt the allocation rankings and may include the following:
 - a. An error in the designation of the application's size classification.
 - b. A mistake in the application of one (1) or more of the evaluation criteria.
 - c. A misinterpretation of the applicability of an evaluation criterion.
- (4) The public, including, but not limited to, applicants for allocation awards, shall be permitted to testify at the public hearing. Applicants may offer testimony about their applications or other applications; however, in no event may an applicant offer modifications to an application that could change the points awarded or the ranking of the application.
- (5) At the conclusion of the public hearing, the Planning Commission may:

- a. Move to accept the evaluation rankings as submitted by the director of planning.
 - b. Move to accept the evaluation rankings as may be modified as a result of the public hearing.
 - c. Move to continue the public hearing to take additional public testimony.
 - d. Move to close the public hearing but to defer action on the evaluation rankings pending receipt of additional information.
 - e. Move to reject the evaluation rankings.
- (6) The Planning Commission shall finalize the evaluation rankings within sixty (60) days following initial receipt of the director of planning evaluation ranking, report and recommendation.

(d) *Notification to applicants:* Upon finalization of the evaluation rankings by the Planning Commission, notice of the rankings by size classification, shall be posted at the planning department offices and at such other places as may be designated by the Planning Commission.

- (1) Applicants who receive allocation awards shall be further notified by certified mail, return receipt requested. Upon receipt of notification of an allocation award, the applicant may request issuance of a building permit for the applicable development of the allocated non-residential floor area.
- (2) Applicants who fail to receive allocation awards shall be further notified by certified mail, return receipt requested; without further action by such applicants nor the payment of any additional fee, such applications shall remain in the NROGO system for reconsideration at the next allocation in the current or following annual allocation period.

(e) *Identical rankings:* If two (2) or more allocation applications in a given size classification receive an identical evaluation ranking and both (or all) cannot be granted allocation awards within the allocation period, the Planning Commission shall award the allocation to the completed application first submitted, based on the controlling date of the application. If two (2) or more such completed applications were submitted with the same controlling date, the available allocation shall be awarded to the application with the fewest number of negative points.

Sec. 9.5-124.7. Administrative relief.

(a) *Eligibility:* An applicant is eligible for administrative relief under the provisions of this section if all the following criteria are met:

- (1) The applicant has complied with all requirements of the non-residential permit allocation system.
- (2) The subject application has not been withdrawn; and
- (3) The subject application has been considered in at least three (3) of four (4) consecutive annual allocation periods and has failed to receive an allocation award.

(b) *Application:* An application for administrative relief shall be made on a form prescribed by the director of planning and may be filed with the planning department no earlier than the conclusion of the third annual allocation period and no later than ninety (90) days following the close of the fourth annual allocation period.

(c) *Waiver of rights:* Failure to file an application shall constitute a waiver of any rights under this section to assert that the subject property has been taken by the county without payment of just compensation as a result of the non-residential floor area allocation system.

(d) *Processing and review by planning director:* Upon the filing of an application for administrative relief, the director of planning shall prepare a written report with recommendation and forward the report to the Board of County Commissioners along with all relevant files and records relating to the subject application. The planning director shall advertise and schedule a public hearing for consideration of the application by the Board of County Commissioners.

(e) *Public hearing:* At a public hearing, the Board of County Commissioners may review the relevant application and applicable evaluation ranking, taking testimony from county staff and others as may be necessary and hear testimony and review documentary evidence submitted by the applicant. At the conclusion of the public hearing, the Board may take any or a combination of the following actions:

- (1) Grant the applicant an allocation award for all or a part of the non-residential floor area requested in the next allocation awards.
- (2) Offer to purchase the property at its fair market value.
- (3) Suggest such other relief as may be necessary and appropriate.

Sec. 9.5-124.8. Evaluation criteria.

(a) *Evaluation point values:* The following point values established are to be applied cumulatively except where otherwise specified:

- (1) Infill: The following points are intended to encourage the infill of areas served by existing infrastructure:

<i>Point assignment:</i>	<i>Criteria:</i>
+ 10	An application which proposes non-residential development on an infill site served by existing infrastructure, including at a minimum, potable water, electricity, and roadways, which the county engineer determines is paved.

	<i>Additional requirements:</i>
	In order to be considered "served," the necessary infrastructure must be both: 1. Located along the same street as the lot or parcel proposed for development; and 2. In place since July 13, 1992.

- (2) *Intensity reduction:* The following points are intended to encourage the voluntary reduction of intensity:

<i>Point assignment:</i>	<i>Criteria:</i>
+ 4	An application proposes development that reduces the permitted floor area ratio (FAR) to twenty three percent (23%) or less.
	<i>Additional requirements:</i>
	A legally binding restrictive covenant running in favor of Monroe County that limits the floor area ratio of the property to a maximum of twenty three percent (23%) for a period of ten (10) years shall be approved by the Board of County Commissioners and recorded prior to the issuance of any building permit pursuant to an allocation award.

- (3) *Land dedication:* The following points are intended to encourage the voluntary dedication of vacant, buildable land within those areas proposed for acquisition by governmental agencies for the purposes of conservation or resource protection:

<i>Point assignment:</i>	<i>Criteria:</i>
+ 1	An application which includes the dedication to Monroe County of one (1) vacant, legally platted buildable lot or at least one (1) acre of unplatted buildable land located within a Conservation Land Protection Area or areas proposed for acquisition by governmental agencies for the purposes of conservation and resource protection.
+ 1	An application which includes the dedication to Monroe County of either an additional legally platted, buildable lot, or an additional one (1) acre of unplatted buildable land located in areas proposed for acquisition by governmental agencies for the purposes of conservation or resource protection.

- 10	An application which proposes non-residential development within the Coupon Bight or C.A.R.L. acquisition areas.
- 10	An application which proposes non-residential development within the "secondary zone" defined by the U.S. Fish and Wildlife Service in the Habitat Management Guidelines for the Bald Eagle in the Southeast Region, 1987, incorporated herein by reference.

- (7) *Perseverance points*: The following points are intended reward an application based upon the number of years spent in the NROGO system without receiving an allocation award:

<i>Point assignment:</i>	<i>Criteria:</i>
+ 1	A point shall be awarded on the anniversary of the controlling date for each year that the application remains in the NROGO system.

- (8) *Coastal high hazard area*: The following points are intended to discourage development in a coastal high hazard area (CHHA):

<i>Point assignment:</i>	<i>Criteria:</i>
- 1	An application which proposes non-residential development within a "A" zone on the FEMA flood insurance rate map.
- 8	An application which proposes non-residential development within a "V" zone on the FEMA flood insurance rate map.
+ 1	An application which proposes non-residential development within a "X" zone on the FEMA flood insurance rate map.
<i>Additional requirements:</i>	
	1. The term coastal high hazard area (CHHA) is defined in Sec. 9.5-4 and the applicable areas are shown on the most recent Federal Emergency Management Agency (FEMA) flood insurance rate map.

- (9) *Coastal barrier resources system (CBRS)*: The following points are intended to discourage development of the CBRS:

<i>Point assignment:</i>	<i>Criteria:</i>
- 10	Application proposes development within units of the coastal barrier resources system (CBRS).
	<i>Additional requirements:</i>
	1. The term coastal barrier resources system (CBRS) is defined in Sec. 9.5-4 and the applicable areas are shown on the most recent FEMA flood insurance rate map.

- (10) *Conservation land protection areas*: The following points are intended to discourage development, which impacts conservation land protection areas:

<i>Point assignment:</i>	<i>Criteria:</i>
- 2	An application, which proposes a development located within a Conservation Land Protection Area as defined in Sec. 9.5-4.

- (11) *Historic resources*: The following points are intended to encourage protection of historic and archaeological resources:

<i>Point assignment:</i>	<i>Criteria:</i>
- 10	An application which proposes an undertaking adversely impacting, removing, or destroying historic resources.
+ 10	An application which proposes an undertaking preserving, rehabilitating, restoring, or reconstructing historic resources.
	<i>Additional requirements:</i>
	The Secretary of the Interior's Standards for the Treatment of Historic Properties shall be used in making the determinations, and the Historic Preservation Commission shall make the determination.

- (12) *Highway access:* The following points are intended to encourage connections between commercial uses and reduction of the need for trips and access onto US Highway 1:

<i>Point assignment:</i>	<i>Criteria:</i>
+5	The development's parking lot is connected to an adjacent non-residential parking lot; or the applicant records a driveway easement in favor of the public to connect the applicant's parking lot to an adjacent, non-residential parking lot; or the development does not propose an additional driveway onto US Highway 1
	<i>Additional Requirements:</i>
	Properties with no access to U.S. Highway 1 are only eligible to receive these points if direct access is to a State Road or County collector road as designated in the comprehensive plan.

- (13) *Landscaping and water conservation:* The following points are intended to encourage the planting of native vegetation and promote water conservation:

<i>Point assignment:</i>	<i>Criteria:</i>
+3	The project provides a total of twice (2x) the number of native landscape plants on its property than the number of native landscape plants required by this chapter within landscaped bufferyards and parking areas.
+1	Twenty-five percent (25%) of the native plants provided to achieve the three (3) point award above or provided to meet the landscaped bufferyard and parking area requirements of this chapter are listed as threatened or endangered plants native to the Florida Keys.
+2	Project landscaping is designed for water conservation including use of xeriscape principles such as vegetation is one hundred (100%) native plants and rainfall is collected and directed to landscaped areas, or reused wastewater or treated seawater is used for watering landscaped plants.

	<i>Additional requirements:</i>
	<p>Prior to the issuance of a building permit authorized by an allocation award , the applicant shall:</p> <ol style="list-style-type: none"> 1. Post a two-year performance bond in accordance with this chapter to ensure maintenance of the native plants; and, 2. Shall sign an affidavit acknowledging that he is subject to code enforcement action should the native plants not be maintained.

Sec. 9.5-124.9. Employee Housing Fair Share Impact Fee

(a) *Purpose:* All new non-residential floor area, including commercial/business, institutional, and industrial development, creates a direct or indirect requirement for employee housing. The availability and stability of employee housing stock is essential for the economic health of Monroe County. Therefore all applicants for new or transferred non-residential floor area shall be assessed a fee to be used by Monroe County to address employee housing issues.

(b) *Type of development affected:*

- (1) All new non-residential floor area under Sec. 9.5-124.2 (a).
- (2) The following development activities exempted under Sec. 9.5-124.3 are subject to the Employee Housing Fair Share Impact Fee:
 - a. Non-residential development in areas exempted from residential ROGO. (Sec. 9.5-124.3(a)(2)).
 - b. Development activity for certain not-for-profit organizations. (Sec. 9.5.124.3(a)(4)).
 - c. Vested rights. (Sec. 9.5-124.3(a)(5)).
 - d. De minimis expansion of non-residential floor area. (Sec. 9.5-124.3(a)(6)).
 - e. Industrial uses. (Sec. 9.5-124.3(a)(7)).
 - f. Transfer and redevelopment off-site of lawfully established non-residential floor area, which has not operated commercially for three years or more. (Sec. 9.5-124.3.3(a)(10)).

(c) *Establishment of Fee Schedule:* An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

Structures for non-residential uses of one (1) to 2,000 square feet	<u>\$1.00 per square foot</u>
---	-------------------------------

Structures for non-residential uses containing more than 2,000 square feet \$2.00 per square foot*

*The fee is calculated on the total new or transferred non-residential floor area subject to f. above, not just on that portion above 2000 square feet.

(d) Proceeds from the impact fees collected shall be deposited in the employee housing fair share impact fee account and used exclusively to offset the cost of required permitting and connection fees related to the development of new employee housing, in accordance with a schedule and procedures recommended by the Planning Commission and approved by the Board of County Commissioners.

Section 2. If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

Section 3. This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.

Section 4. This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

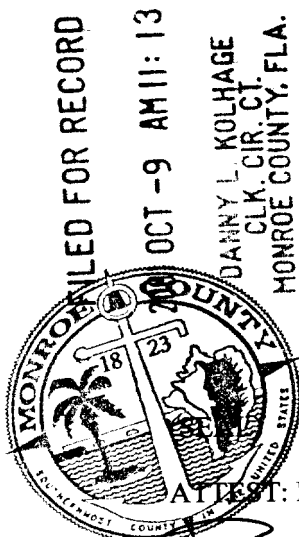
PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19th day of September, A.D., 2001.

Mayor George Neugent	<u>yes</u>
Mayor Pro Tem Nora Williams	<u>yes</u>
Commissioner Charles "Sonny" McCoy	<u>yes</u>
Commissioner Murray Nelson	<u>yes</u>
Commissioner Dixie Spehar	<u>yes</u>

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

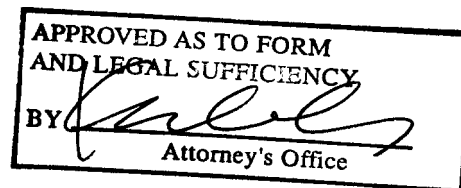
BY

George R. Neugent
Mayor Neugent



ATTEST: DANNY KOHLAGE, CLERK

Jamela Hancock
DEPUTY CLERK





**CLERK OF THE CIRCUIT COURT
MONROE COUNTY**

BRANCH OFFICE
MARATHON SUB COURTHOUSE
3117 OVERSEAS HIGHWAY
MARATHON, FLORIDA 33050
TEL. (305) 289-6027
FAX (305) 289-1745

MONROE COUNTY COURTHOUSE
500 WHITEHEAD STREET
KEY WEST, FLORIDA 33040
TEL. (305) 292-3550
FAX (305) 295-3663

BRANCH OFFICE
PLANTATION KEY
GOVERNMENT CENTER
88820 OVERSEAS HIGHWAY
PLANTATION KEY, FLORIDA 33070
TEL. (305) 852-7145
FAX (305) 852-7146

October 9, 2001

Mrs. Liz Cloud, Chief
Bureau of Administrative Code & Laws
The Elliott Building
401 S Monroe Street
Tallahassee FL 32399-0250

Via Certified Mail 7099 3400 0005 9118 6312

Dear Mrs. Cloud,

Enclosed please find certified copies of the following Ordinances:

Ordinance No. 030A-2001 amending Section 2-15.1(b) Monroe County Code, in order to change the department title of Civil Defense to Emergency Management; authorizing the Sheriff to declare a state of local emergency; providing for severability; providing for the repeal of all Ordinances inconsistent herewith; providing for incorporation into the Monroe County Code of Ordinances; and providing an effective date.

Ordinance No. 031A-2001 prohibiting parking on County Roads during certain times for the purposes of street cleaning; providing that parking prohibition for street cleaning purposes is not effective until official signs stating the parking prohibition have been in place for thirty days; providing for penalties; providing for severability; providing for the repeal of all Ordinances inconsistent herewith; providing for incorporation into the Monroe County Code of Ordinances; and providing an effective date.

Ordinance 032-2001 adding Section 9.5-124, Non-Residential Rate of Growth Ordinance (NROGO); providing for the severability; providing for the repeal of all Ordinances inconsistent herewith; providing for the incorporation into the Monroe County Code; and directing the Clerk of the Court of the Board to forward a certified copy of this Ordinance to the Florida Department of Community Affairs and providing an effective date.

October 9, 2001


Ordinance No. 033-2001 amending Article VII Division 16 of the Monroe County Land Development Regulations, Section 9.5-434, Wireless Communications Facilities; and Sections 9.5-232 through 9.5-254, permitted uses; to establish regulations and standards for the zoning and management of Wireless Communications Facilities within unincorporated Monroe County; providing severability; providing for conflict with other code provisions; and providing an effective date.

These Ordinances were adopted by the Monroe County Board of County Commissioners at a Regular Meeting in formal session on September 19, 2001. Please file for record.

Should you have any questions please feel free to contact me at (305) 292-3550.

Danny L. Kolhage
Clerk to Circuit Court
and ex officio Clerk to the
Board of County Commissioners

by:


Pamela G. Hancock, Deputy Clerk

Cc: County Administrator w/o documents
Sheriff's Office 030A-2001
Public Safety 030A-2001 & 033-2001
Public Works 031A-2001
Growth Management 032-2001 & 033-2001
County Attorney
BOCC
File

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Mrs. Liz Cloud (Ord.030A/031A/032/033)

Postage \$
Certified Fee
Return Receipt Fee
(Endorsement Required)
Restricted Delivery Fee
(Endorsement Required)
Total Postage & Fees

\$ 3.50
2.70
1.80
0.00
\$ 7.00

KEY WEST FL 33040
OCT 6 - 100

Postmark
Here

Name (Please Print Clearly) (to be combined with envelope)
Bureau of Administrative Code & Laws

The Elliott Building

Street, Apt. No., or P.O. Box No.
401 S Monroe Street

City, State, ZIP+4
Tallahassee FL 32399-0250

PS Form 3800, July 1999

See Reverse for Instructions

7099 3400 0005 9118 6312
PTTB 5000 0046 6602

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mrs. Liz Cloud
Bureau of Administrative Code
The Elliott Building
401 S Monroe Street
Tallahassee FL 32399-0250

(Ord.030A/031A/032/033-2001)

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

GRACIE PENTON
DEPARTMENT OF STATE

☐ Agent

☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

OCT 15 2001

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. A

7

PS I

102595-00-M-0952

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Division of Administrative Services
Division of Corporations
Division of Cultural Affairs
Division of Elections
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
MEMBER OF THE FLORIDA CABINET



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

HISTORIC PRESERVATION BOARDS
Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
RINGLING MUSEUM OF ART

October 16, 2001

Honorable Danny L. Kolhage
Clerk of the Circuit Court
Monroe County
500 Whitehead Street
Key West, Florida 33040

Attention: Pam Hancock, Deputy Clerk

Dear Mr. Kolhage:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated October 9, 2001 and certified copies of Monroe County Ordinance Nos. 030A-2001, 031A-2001, 032-2001 and 033-2001, which were filed in this office on October 12, 2001.

Sincerely,

Liz Cloud, Chief
Bureau of Administrative Code

LC/mp

FILED FOR RECORD
2001 OCT 18 PM 1:53
DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

FILED FOR RECORD
2001 DEC 20 PM 3:15
DARRYL L. KOLHAGE
CLERK OF CIR. CT.
MONROE COUNTY, FLA.

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: MONROE COUNTY LAND DEVELOPMENT
REGULATIONS ADOPTED BY
MONROE COUNTY ORDINANCE NO. 032-2001

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2000), approving Monroe County Ordinance No. 032-2001 as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Monroe County is a local government within the Florida Keys Area.
2. On October 17, 2001, the Department received for review Monroe County Ordinance No. 032-2001 which was adopted by the Monroe County Board of County Commissioners on September 19, 2001 ("Ord. 032-2001"). Ord. 032-2001 adds a Non-residential Rate of Growth Ordinance (NROGO) - Section 9.5-124 of the Monroe County Land Development Regulations.
3. Ord. 032-2001 is consistent with the County's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2000).

DCA Final Order No. DCA01-OR-224

5. Monroe County is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2000) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

6. “Land development regulations” include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2000). The regulations adopted by Ord. 032-2001 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”). § 380.0552(7), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions. § 380.0552(7), *Fla. Stat.* (2000).

8. Ord. 032-2001 promotes and furthers the following Principles of §380.0552(7), *Fla. Stat.* (2000):

- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (b) To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands,

DCA Final Order No. DCA01-OR-224

native tropical vegetation, (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(f) To enhance natural scenic resources, promote aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.

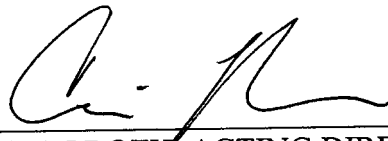
(g) To protect the historical heritage of the Florida Keys.

9. Ord. 032-2001 is not inconsistent with the remaining Principles. Ord. 032-2001 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 032-2001 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



CARI ROTH, ACTING DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY

DCA Final Order No. DCA01-OR-224

CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

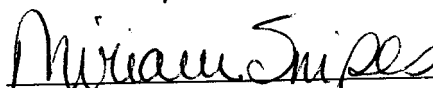
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this ~~25th~~ ^{16th} day of December, 2001.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable George Neugent
Mayor of Monroe County
500 Whitehead Street
Key West, Florida 33040

Danny L. Kolhage
Clerk to the Board of County Commissioners
500 Whitehead Street
Key West, Florida 33040

DCA Final Order No. DCA01-OR-224

Timothy J. McGarry, AICP
Director, Growth Management Division
2798 Overseas Highway, Suite 400
Marathon, Florida 33050

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee